

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-14, which are amended herewith, are presently active in this case, Claims 15-28 having been withdrawn from consideration as directed to a non-elected invention.

In the outstanding Official Action Claims 1, 7 and 9-13 were rejected under 35 USC §112, second paragraph, as being indefinite. Claims 1-9 and 11-14 were rejected under 35 USC §103(a) as being unpatentable over Bernard (US 5,918,213) in view of Reisman (US 6,594,696 B1). Claim 10 was rejected under 35 USC §103(a) as being unpatentable over the combination of Bernard and Reisman as applied to Claim 1 above, and further in view of Spagna (US 6,587,837 B1)

In response to the outstanding rejection of Claims 1, 7, and 9-13 under 35 USC §112, Claims 1-14 have been amended to define Applicants' invention in terms of a --method-- instead of a "system." In view of these changes, the outstanding rejection under 35 USC §112, second paragraph, is believed to have been overcome.

In light of the several grounds for rejection on the merits, Claim 1 has been amended to clarify the nature of the digital content transmission condition stated in each of the claims, and particularly to clarify that the noted digital content transmission condition is related to quality of communication. Support for these changes is found in original Claim 3, for example. In view of this change, the amended claims are believed to be clearly patentably distinguishing over the cited art, next discussed.

In regard to the rejection of Claims 1-9 and 11-14 under 35 USC §103 as being unpatentable over Bernard (US 5,918,213) in view of Reisman (US 6,594,696), at page 6 of the outstanding Office Action, it is acknowledged that "Bernard does not specifically disclose

and teach a desired digital content transmission condition selected by the consumer...;  
making the digital content retailer reserve the network managed by a network operator  
according to the desired digital content transmission condition sent from the consumer;... .”  
The outstanding Office Action relies on Reisman for such teaching.

Reisman, however, fails to remedy such deficiencies in Bernard. Indeed, the portions of Reisman relied upon in regard to Claim 1, i.e., the Abstract and Figure 1, Col. 25, lines 1-53, Col. 55, lines 19-26, and Col. 60, lines 6-39, fail to include any teachings specific to “a desired digital content transmission condition selected by the consumer...; making the digital content retailer reserve the network managed by a network operator according to the desired digital content transmission condition sent from the consumer;...” Furthermore, these portions of Reisman also fail to relate “a desired digital content transmission condition” to – quality of communication—as stated in the amended claims.

In regard to the particular digital content transmission condition stated in Claims 3 and 4, in the paragraph linking pages 7 and 8 of the outstanding Office Action, the outstanding Office Action identifies column 4, lines 43-67, column 6, lines 60-67 and column 7, lines 1-3 in addition to column 16, lines 4-45 of Reisman as being pertinent. However, a review of these portions of the Reisman patent fails to uncover a clear teaching relating a digital content transmission condition selected by the consumer to a communication quality of networks to be employed in the transaction. At column 5, line 57 – column 6, line 6 of Reisman, Reisman notes typical communication equipment for permitting communication in a digital rather than analog realm and notes, “preferably, the user communications protocols specify parameters such as a source address, which may be a common carrier address, such as a telephone number, an object parameter such as file name or names, file size, location content and format are specified, as appropriate, in either the user communication protocols

or the source communication protocols, or both. Such object specifications can be listed in an object manifest stored in the user's station, which preferably, for better control of the transport operation, is sent to the remote object source as a verifier." However, such description in the Reisman patent relates to communication capabilities between the user and the source, and does not infer or teach that the user or consumer designates a desired digital content selected by the consumer and a desired digital content transmission condition selected by the consumer, sending the desired digital content transmission condition to a digital content retailer, and making the digital content retailer reserve a network managed by a network operator according to the desired digital content transmission condition sent from the consumer. Nowhere does Reisman disclose that the consumer has a capability of selecting a digital content transmission condition related to quality of a return delivery of digital content, that the retailer reserves a network managed by a network operator according to the desired digital content transmission condition, related to quality communication, and that the retailer downloads the digital content via the reserved network.

On the other hand, at column 19, lines 35-67 of Reisman, Reisman in its Figure 6 disclosure notes that "Fig. 6 clearly shows how the inventive information transport component 14 [or Reisman] relieves user 100 of many tedious communication functions such as activating a communication product, specifying a call route, specifying the object to be transported and deactivating the communication product." Exactly what is meant by "specifying a call route" is not clear, but in the context of Reisman it appears to be the specification of a call route from the consumer to the source, and not the specification of a digital content transmission condition related to quality of communication from a network reserved by the retailer to the consumer. Accordingly, it is respectfully submitted that Reisman, absent hindsight, clearly does not remedy the deficiencies in Bernard and does not

include the teachings on which it was relied upon. Accordingly, at least for this reason, the outstanding grounds for rejection are traversed.

Furthermore, in the last several paragraphs of Claim 1, Claim 1 recites “making the digital content retailer collect a charge for the desired digital content, in which a transmission charge corresponding to the desired digital content transmission condition is included, from the consumer; and making the digital contact retailer pay the transmission charge to the network operator.” These features of Applicants’ invention are directed to the deficiency in the admitted prior art as described at page 4, lines 5-14 of Applicants’ specification. Thus, Applicants’ invention further empowers the consumer by providing a method in which the consumer decides the desired digital content transmission condition related to quality of communication by which the consumer is to receive the desired digital content, while simplifying the process to the consumer in that the consumer is then provided with only a single charge to be paid. According to Applicants’ invention, it is the digital content retailer which pays the transmission charge to the network operator, and not the consumer, whereby the overall presentation to the consumer is simplified and advantageously streamlined. Neither Bernard nor Reisman include any such teachings, nor does not U.S. Patent 5,710,887 to Chelliah referenced at page 5, line 10 of the outstanding Office Action.

The remaining references of record, U.S. Patent 6,587,837 to Spagna et al, has also been considered, but is deemed no more pertinent to the question of patentability than the references above discussed.

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Consequently, in view of the present amendment, and in light of the above discussion, it is respectfully submitted that Claims 1-15 are definite and patentably distinguishing over the art of record. The present application is therefore believed to be in condition for formal allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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